

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 FPC-01 H-01 INR-07 INT-05 L-03
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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC PRIORITY 2597

INFO ALL AMCONSULS CANADA

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E.O. 11652: N/A

TAGS: ENRG, CA

SUBJ: ENERGY: COURT CHALLENGES TO GAS PIPELINE
THROUGH CANADA

1. CANADIAN MEDIA FEB 10 AND 11 HAVE GIVEN CONSIDERABLE
PLAY TO STATEMENTS BY SENATOR TED STEVENS OF ALASKA,
ALLEGING THAT PIPELINE THROUGH CANADA COULD BE
SERIOUSLY DELAYED "UNLESS CANADIAN PARLIAMENT GRANTS
THE PRIME MINISTER SIMILAR POWER (I.E., SIMILAR TO U.S.
PRESIDENT'S POWER UNDER PIPELINE LEGISLATION) TO WAIVE
CANADIAN LAWS AND TO LIMIT CANADIAN JUDICIAL REVIEW."
STEVENS REPORTEDLY SAID "ALL IT WOULD TAKE IS ONE UPSET
CANADIAN CITIZEN OR INTEREST GROUP TO BRING A SUIT
AGAINST A CANADIAN AGENCY ON SOME TECHNICAL POINT AND
THE PROJECT COULD BE DELAYED FOR MONTHS OR YEARS."

2. DIGBY HUNT, ASSISTANT DEPUTY MINISTER FOR ENERGY
POLICY, ENERGY, MINES AND RESOURCES (EMR) TELLS ECON
COUNSELOR THAT STEVENS MISUNDERSTANDS CANADIAN LEGAL
STRUCTURE WHICH DOES NOT PROVIDE SAME "DUE PROCESS"
AS IN U.S. HUNT'S PERSONAL UNDERSTANDING, WITHOUT
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HAVING CONSULTED GOC LAWYERS, IS THAT:

A. NEB HAS SOLE AUTHORITY TO DECIDE ON PIPELINE
APPLICATIONS.

B. NEB DECISION IS SUBJECT ONLY TO APPROVAL OR REJECTION
(BUT NOT MODIFICATION) BY GOVERNOR-IN-COUNCIL, I.E.

THE CABINET.

C. BERGER REPORT IS ADVISORY TO MINISTER OF INDIAN AND NORTHERN AFFAIRS AND WILL PRESUMABLY BE TAKEN INTO ACCOUNT BY CABINET BUT HAS NO OTHER LEGAL STANDING.

D. NEB DECISION APPROVED BY CABINET CANNOT BE CHALLENGED IN COURT ON POINTS OF FACT, INTERPRETATION OF FACT, OR JUDGMENT, NOR ON GROUNDS THAT CERTAIN CONSIDERATIONS (E.G. ENVIRONMENT) HAVE NOT BEEN TAKEN SUFFICIENTLY INTO ACCOUNT; IT CAN ONLY BE CHALLENGED ON A POINT OF LAW OR JURISDICTION.

3. ECON COUNSELOR SUGGESTED THAT IT MIGHT BE USEFUL FOR GOC TO DEVELOP A FORMAL STATEMENT OF LEGAL SITUATION FOR USE IN RESPONDING TO STATEMENTS SUCH AS STEVENS'. HUNT SAID HE WOULD TAKE THIS UNDER ADVISEMENT.

4. IF DEPARTMENT SEES NEED FOR DEFINITIVE STATEMENT ON LEGAL SITUATION IN CANADA TO ANSWER CONGRESSIONAL INQUIRIES OR FOR OTHER PURPOSES, REQUEST INSTRUCTIONS SO THAT WE CAN PRESS MATTER WITH HUNT OR OTHER APPROPRIATE OFFICIALS.
ENDERS

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